Athens Journal of Law - Volume 5, Issue 2 – Pages 99-116

Regulation and Practice of Hungarian Cartel Law in the 20th Century[1]

By Norbert Varga[*]

The practical validation of the Cartel Law in Hungary can be reconstructed based on judicial practice. The existing memorials essentially only contain the verdicts of the courts of the first and second instances, and there are only a small number of archive sources that describe the factum in its entirety. Due to this, only the information found in the verdicts' dispositional and justification portions can aid us in the examination of the rules of Procedural Law. All in all, it can be stated, by taking archival sources into account, that the peremptory majority of cartel cases were jurisdictional legal actions. The specialized nature of the procedural rules can be viewed as unique in the history of legal action in Hungary, for the civil courts reached verdicts by mainly employing the rules of Bp., according to Statute 68400/1914. I. M. Apart from the problems in the field of Substantive Law, we can observe the process of the lawsuits and the procedural acts, especially the act of verification. We can observe what data and information the courthouses used in order to reach their resolutions. I would like to present the regulation of the Hungarian cartel law special attention to the legal cases.

Keywords: *Cartel law; Hungary; Procedure law; Legal cases; Archival sources*

Introduction

The rules and cases of the so-called legal actions of general interest in connection to the cartels were introduced by the 20th Act of 1931. According to the technical definition, the procedural law, as a specified aspect of Cartel Act, regulated the formal law so that the common good and the economy could benefit from it.[2] The methodology of the cartel supervision offices belonged to this area of law, and it was practiced by the government, the specific ministries, the Royal Hungarian Legal Board, the Cartel Committee, and the Price Analysing Committee from the executive branch, and the regular, elected, and Cartel Court from the judicial branch.[3] In this essay, I describe the dispositions in connection to the procedural law of the Cartel Court, and with that, to analyse the existing legal precedents.

The Cartel Court was introduced after the law came into effect, and it was

[*]PhD (History); Ph.D. (Law and Political Sciences). Associate professor, Department of Hungarian Legal History, Faculty of Law and Political Sciences, University of Szeged, Szeged, Hungary. Email: vargan@juris.u-szeged.hu.

[1]The research was supported by Bolyai János Research Scholarship (BO/00198/18/9) of the Hungarian Academy of Sciences

[2]Harasztosi (1936) at 510.

[3]Kenes (1912); Perényi (1912).

https://doi.org/10.30958/ajl.5-2-1 doi=10.30958/ajl.5-2-1

must be taken against a cartel should be objected to the consideration of a judge most of the times, so […] the judicature of the Cartel Act could best be assured by a separate cartel court".[4]

Should an agreement or a statement fall under Paragraph No. 1 of the aforementioned Act, then, according to the statement of the assigned secretary, the Royal Hungarian Legal Board could file a case at the Cartel Court.[5] The problem of the definition of cartels by the courts arose in legal proceedings in connection to the agreements. To be more exact, the problem was what acts can be considered to be under the effects of Cartel Act.[6]

The aforementioned understanding of the act became interpretable by practice. The Cartel Court examined an agreement that considered the acquisition, resale, sale price, and conditions of firewood, coal, charcoal, and forge coal, and also contained rules on its accounts and mutual buyer protection. The Cartel Court interpreted Paragraph No. 1 of the Cartel Act, and determined that the intention of the respondent was not to regulate the actions on one occasion but "defined the respondents' behaviour in the terms of business for a longer time period". The point of the agreement was to regulate the economic competition "in connection to the commerce and formation of prices of these merchandises, between two subjects of free trade".[7] In its verdict, the Cartel Court stated that "such an agreement is under the effects of Paragraph No. 1 of the Cartel Act, with no consideration of its personal, economic or geographic field".[8]

The definition of common good and the interests of public economics was one of the most notable problems of the legal institutions that regulated cartels. The works of Ferenc Harasztosi Károly (among other literary sources) should be highlighted, which stated that "The state must establish a public law system for cartels, which ensures that the cartel disagreements of economic life are taking place within a framework which ensures that they do not endanger the interests of public economy and of common good".[9]

In this matter, we have to stress the first statement of principle of the Cartel Court (on the matter of business isolation, boycott, or exclusion).[10] This statement – by referring to Paragraph No. 6 of the Cartel Act – established that it is against the common good and economic conditions "exclusion not only gives a party economically reasoned disadvantages, but in fact capable of destroying its complete economic existence".[11] In connection to this, the Cartel Court also examined the cartel contracts containing the stipulations of isolation. The Cartel

[4]Magyar Nemzeti Levéltár (Hungarian National Archive) (hereafter MNL) K-184. 1933. 41. 30061/35309; Kelemen, S. (1931). 'A megalkotandó kartelbíróság szerepéről' in *Kereskedelmi Jog*. 28(2): 32-34; Anon. (1932); Stipta (2016) at 53-64.
[5]MNL. K-184. 1933. 41. 31960/92488; MNL. K-184. 1933. 41. 30061/35309.
[6]MNL. K-184. 1937. 41. 86293/86293; see: MNL. K-184. 1937. 41. 86293/86293.
[7]Cartel Court P. IV. 5261/1932; see Ranschburg (1935) at 35; MNL. K-184. 1933. 41. 31960/92488; Szabó (2016) at 64-81.
[8]Cartel Court P. IV. 5261/1932; In Ranschburg (1935) at 35; see: Curia P. IV. 3065/1933-22. Ibid. 36-37., P. IV. 920/1933/9. In: Ibid., 35.
[9]Harasztosi (1936) at 512.
[10]MNL. K-184. 1933. 41. 31960/92488.
[11]Ranschburg (1935) at 47; MNL. K-184. 1933. 41. 31960/92488.

Court only agreed to enforce this if it had "reasons especially significant and relevant to the public".[12] According to the Cartel Court, "The emphasis is not so much on private, but general interests".[13] The committee referred to the justification of the 5th act of 1923: "The categorical imperatives of morals must also be validated during conflicts in the fields of commerce and industry, if one does not want to set individual selfishness loose on the trade".[14] In connection to both fair competition and cartel regulations, one must always keep the interests of common good in mind.[15] The Curia also stated in Mandate No. IV. P. 4936/1927 that any contract which is against general interests and good morals shall be considered null and void.[16]

One could file a legal action to the Cartel Court if an agreement or an application of a regulation, or a cartel that was formed because of it, was against proper ethics or common good.[17] A secretary could ask for several things in such actions: the court should disband a cartel formed by such an application or regulation, and make a pecuniary offence if it keeps on functioning. The secretary could also ask for forbidding the execution of the agreement or the regulation, and for a fine if the participants continue to pursue their goals.[18] Filing a legal action introduced by the cartel court could be done by any office or individual by contacting the Secretary of Trade and providing ample evidence.[19] Before filing the legal action, the secretary could ask for a second opinion from the Cartel Committee, but it was not compulsory. However, if a public office or authority filed the claim, the secretary usually turned to the Cartel Committee for their opinion.

The administrative offices only practiced initiative rights during proceedings, and after this, taking measures were assigned to the court. The offices could participate in the legal action as a party to the dispute. All in all, it was in connection to the consideration of court independence and the guarantees of judicial proceedings, not to mention the respect of basic rights.[20]

In a lawsuit based on a legal action of general interest, the court could decree the disbanding of the cartel, to shut down its operations, to forbid the fulfilment of an agreement or a regulation, or force them to cease a certain action or behaviour. The Act clearly stated what legal arrangements were within the jurisdiction of the government. This meant that in order to enforce these decrees, one did not need a court order. The secretary could enact these measures if the agreement or regulation enforced upon the cartel endangered economic or general interests, especially if it regulated the circulation of goods production or price formation in such a way that the interests of the customers, the entrepreneurs, or the manufacturers were harmed.

[12]MNL. K-184. 1933. 41. 31960/92488.
[13]MNL. K-184. 1933. 41. 31960/92488.
[14]MNL. K-184. 1933. 41. 31960/92488.
[15]Szegő (1936) at 34-36.
[16]MNL. K-184. 1933. 41. 31960/92488.
[17]Dobrovics (1937) at 126; Szente (1931); Gavallér (1932) at 6.
[18]Ranschburg (1931) at 100.
[19]Ranschburg (1931) at 100; Harasztosi (1936) at 513.
[20]MNL. K-184. 1933. 41. 30061/35309.

It was within the jurisdiction of the ministry to examine the case, and, if was deemed necessary, it could propose to register the data, to make inquiries, and submit official documents. With the participation of a commissioned emissary, it could examine the business conductions and business management, and by looking at the business records and other documents of a cartel in question. It could also question the members and the employees. In case the ministry opted for the suspension of the operations of a cartel, then it could try to reach a peaceful solution by holding a hearing for the concerned parties. If this method was not fruitful, then it could propose to the government to withdraw tax and customs discounts, and the exclusion from public contracts. These arrangements fell under the topic of industrial codes and transport rates, and this is how the government intended to stop the cartel from continuing such actions that were against general interests.[21] Based on the suggestion of the Secretary of Commerce, the government could introduce these arrangements if none of the specified conditions dictated by the Act were present.[22]

In cases where the ministry filed for the cancellation of an official permit without which the cartel could not continue its intended activities, then they had to turn to the court. The ministry could make a suggestion to the government to modify or nullify the customs items written down in the customs tariff. There is an archived example for the latter. The Alkaloida Chemical Factory Inc. wrote an official letter to the Hungarian Royal Central Customs Directory on 12 December 1933, which stated that "For preparations, and in exchange for the exported amount of morphine intended for transformation, the morphine-derivates and their salts be imported customs-free".[23] Because of the emerged economic conditions, if everything else failed, the ministry could turn to the Cartel Court.[24] After briefly describing the rules of conduct, the procedural law – mostly civil law – rules in connection to the cartels will be described in a much detailed fashion, and the legal practice related to this and still available will also be presented.

The Lawsuits

The concept of a lawsuit of general interest was understood as a legal action started based on a claim filed by the Legal Board on the order of the secretary of commerce, with the possible purposes of disbanding a cartel or forbidding them to continue their operations; the suspension of the ongoing legal action, without taking into account whether it is held by an orderly or a court of arbitration; to determine whether or not the actions of a cartel are against the law; the annulment of the verdicts made by the specialized courts.[25]

The question arose regarding in which cases one can pass a lawsuit of general interest. It can be stated that the general opinion was that if there was a

[21]MNL. K-184. 1933. 41. 30061/35309.
[22]Harasztosi (1936) at 513.
[23]MNL. K-184. 1933. 41. 30061/92818.
[24]Ranschburg (1931) at 100-101.
[25]Harasztosi (1936) at 512; Dobrovics (1937) at 126.

chance of that, the state should intervene. The aforementioned Paragraph No. 6 of the Cartel Act determined these. This is not a taxative list, because the act mentioned above lists other cases for filing a statement in order to start a lawsuit of general interest in Paragraph No. 7. A statement could be claimed if the cartel's operations were against the law, public morals, or general decrees. Most of these types of cases were of private interest, and were held earlier by orderly courts or courts of arbitration of the chamber since they broke the law of fair trade. Among many others, some of these cases were lawsuits filed because of boycott or sale under price.[26] It is questionable whether these cases could become lawsuits of general interest since the law was broken, or the acts in question also harm general interests. This is a significant matter, for in cases where competition laws were broken and no general interests were harmed, orderly courts had the jurisdiction.

In my opinion – based on the understanding of the normative text, in order for a lawsuit of general interest to be filed to the Cartel Court, not only the law and public morals had to be broken, but also general interests.[27]

I agree with the statement of Nándor Raschburg, according to which even the name of the lawsuit of general interest excludes the opportunity for a private proposal. The legal action was proposed by the Secretary of Trade at the Royal Hungarian Legal Board. This also indicated that not only the law and public morals had to be harmed, but also the general interests. The statement had to be filed to the Legal Board based on this. In the conviction, the Cartel Court's verdict had to determine the harm that came not only to the law and public morals, but to the general interest, as well.[28]

The evasion of the Cartel Act was the purpose of the so-called "coal cartel", where the coal merchants and the mines, the coal merchants and the medium vendors, and the MÁK and the Salgó reached an agreement. This contract resulted in a monopolistic situation in the coal supplies of Budapest, for ten wholesale merchants took on the obligation to purchase 37.500 carriages of coal from two mines, which was almost the complete coal needs of Budapest for a whole year. The merchants were not allowed to sell any other coal. Because of this, any mines and merchants who were not involved in this contract got into a difficult position. Not to mention that if we look at the situation from the point of view of the consumers, they were forced to buy briquette. The purpose of the cartel was to sell the so-called powdered coal which was pent up.[29] According to the viewpoint of the Cartel Committee, several elements of the cartel contract endangered common good and the interests of public economy, and as such, it falls under the effect of Paragraph No. 6 of the Cartel Act, and because of this, they requested a rise in prices, the elimination of the uncertain economic situation, the decrease of unemployment, stopping the cartel from gaining any advantages in the field of

[26]MNL. K-184. 1933. 41. 31960/92488; Kelemen (1933).
[27]Ranschburg (1931) at 101-102.
[28]Ibid., 102.
[29]MNL. K-184. 1933. 41. 51140/88831

public services, and the annulment of the disadvantaged position of the mines outside the cartel.[30]

The Jurisdiction and Procedure of the Cartel Court

Lawsuits of general interest, temporary measures, laying on of pecuniary fines per orderly punishment, forbiddance, nullification of the verdicts of elected courts, and the suspension of execution of the regulations of elected courts were within the jurisdiction of the Cartel Court.[31]

The Cartel Court could only order the dissolution and the ban from ongoing operation of a cartel if a cartel's operations were against general interests and there was no other way of terminating it. The law gave the secretary the right to ask for a termination directly from the court, without authorizing any other means. However, the rights related to the termination could mean constraining basic rights, especially the right to fusion. But the constitutional rights could only be limited in special cases and with legal authority. Any other case would make the court's actions illegitimate, and it would have been measured by the arbitrary legal practice.

With the dissolution of the cartel, the court generally forbade the cartel and its members to continue their operation. The dissolution of the cartel did not mean that the members would not keep up its operation by acting in unison. This meant that the only way that the verdict would come into effect is if the court forbade the cartel to practice their operation.

There were cases where in spite of the fact that the cartel was dissolved, it kept on operating. The law did not forbid this per se, but in practice what this meant is as follows. The verdict of the court was only valid for the dissolution and the forbiddance of the operation of the cartel involved in the lawsuit. If a new cartel was formed based on a new treaty, then the former verdict did not come into effect there. A new legal action had to be taken against the operation of the new cartel, and new proof was needed that its operation is against general interests. However, in urgent cases, the secretary could place temporary solutions into effect.

In cases where the misconducts of the cartel could be nullified by the fulfilment of an agreement or a decree, then this became the court's order. This was also the decision where the nullification for the statement of claim was filed. In spite of all this, if the statement only asked for the nullification of the agreement or the decree, then the court could not state the dissolution in its verdict. In these cases, the court would have overruled the statement of claim, which is against the 1st Act of 1911 (Judicial Procedure Code, JPC from here on out). They only petitioned for the nullification of the operations or behaviour if the behaviour of the cartel could not be demonstrably correlated to an agreement.[32]

[30]MNL. K-184. 1933. 41. 51140/88831; MNL. K-184. 1932. 41. 51140/53726; MNL. K-184. 1932. 41. 51140/88298; Mária Homoki-Nagy (2017) at 4-14.
[31]Harasztosi (1936) at 528-529; see: anon. (1933).
[32] Ranschburg (1931) at 103-104.

The structure of the Cartel Court was regulated by the Cartel Act itself (Paragraph No. 8). This court was a separate institution, which was established, interestingly enough, within the Supreme Court, the topmost institution within the ordinary judicial system with a president, two appointed judges, and two lay judges. Its head was the president of the Supreme Court, or an individual appointed by the Supreme Court: the vice president or one of the presiding judges of the Supreme Court. The two judges were invited by the presiding judge appointed by the Supreme Court and the president of the acting council by the two appointed judges. The two lay judges were selected by the president of the acting council from those ten specialists that were selected every three years from the list assembled by the Secretary of Justice and the Secretary of Commerce, containing thirty names. The reason behind this was to ensure competency.[33]

Lawsuits of general interests had to be delivered for all participants concerned. In cases where representatives were announced or appointed, then the statements had to be delivered to this individual. In these legal actions, any participants could participate separately, and accompanied by their legal representatives.

In order to ensure a professional opinion, the court could meet with the Cartel Committee ex officio. If it proved to be necessary, the Cartel Committee could do the same with the Price Analysation Council.[34] For example, they followed this procedure in the case of the so-called tin box cartel, in order for the matter to be properly examined. The Cartel Committee called on the Price Analysation Council in order to proceed with the run-down of the prices of some "cartelised commodities". For example, hemp, string, and canvas belonged to this group. There were some agricultural tools on the list, as well, for example, spits, hacks, and shovels.[35] The Cartel Committee took the report of the Price Analysation Council into account in connection to the price of wool and cloth. They also elaborated on what business policies the concerned parties should follow in order to increase the price of Hungarian fleece. They collected their suggestions on appendix sheet 92157/1933, which, among others, listed suggestions such as increasing the influence of the state.[36]

The Cartel Court took the examination results of the Price Analysation Council into account in the suit of Alkaloida.[37] They wished to determine the price of narcotine by moderating.[38] The Committee formed a specialised group while determining the prices. This group reached a decision after the acquisition of the necessary data and conducting hearings for the concerned parties.[39] In the case of

[33]Ibid.,104; Harasztosi (1936) at 528.
[34]Harasztosi (1936) at 522-526. Kelemen (1933).
[35]MNL. K-184. 1933. 41. 31960/92488.
[36]MNL. K-184. 1933. 41. 31960/92157.
[37]MNL. K-184. 1936. 41. 50306/55755.
[38]MNL. K-184. 1936. 41. 55714/55714; MNL. K-184. 1936. 41. 50306/55594; MNL. K-184. 1935. 41. 62330/62330; MNL. K-184. 1933. 41. 51140/88831.
[39]MNL. K-184. 1935. 41. 62330/62330; MNL. K-184. 1934. 41. 28720./71729; MNL. K-184. 1934. 41. 26180/71732; *8 Órai Ujság*, 1934. Vol. 20. No. 246; MNL. K-184. 1932. 41. 51140/66312.

the so-called "oil cartel", they criticised the price and quality determined by the Committee. Quality assurance methods had to be established, as well.[40]

In connection to the work of the Price Analysation Committee, a registry can be found amongst the archived materials, with a short description of price reduction for each and every commodity. This report specifically mentions white oils (paraffin, gasoline, diesel oil), lubricating oil, agricultural tools (i.e., axles, horseshoes, shovels), ironmongeries, machine lubricants, textbooks, linseed oil, pesticides, textile, cement.[41]

As mentioned, the Secretary of Trade could give an order to the Legal Board to start a lawsuit of general interest. The plaintiff of these lawsuits was the Royal Legal Director, who always stood for the interests of the state and the general population. No single individual could become the plaintiff in such lawsuits.[42]

It is also noteworthy that the outline of the Cartel Act would have given an opportunity for a competitor outside the cartel (a so-called *outsider*) to file a claim for a lawsuit of general interest. However, the counterargument was brought forward that *outsiders* would most likely try to secure their private interests by a lawsuit of general interest, and it would be "a direct harassment of the cartel, would learn and publish their business secrets, and their ultimate goal would be to enforce a bigger and bigger contingent for themselves, and also to join the cartel, and after that, would nullify the lawsuit which was started by them being the plaintiff".[43] But there were reasons for the outsiders to become plaintiffs, stating that this would have helped the detection of cartel abuses. The lawsuits filed against cartels could have been much more successful if these were started by *outsider*s. However, private and general interests were separated within the law proposal, so in the proposition submitted to the parliament, outsiders were not granted the right to become plaintiffs. Legislation accepted this viewpoint.[44]

This meant that no interest of private law could be enforced in lawsuits of general interests. "The legal action of private law – public action – can only serve to protect and avoid the endangerment of the law, public morals, general interests, and by that, economy and the welfare of the public, and in order to do so, it shall not be used to serve personal interests".[45] In cases where individuals suffered private wrongs due to the operation of cartels, then a civil lawsuit, and not a lawsuit of general interest, was necessary. If, apart from his complaint, the operation of the cartel endangered general interests, the individual had the opportunity to draw the attention of the supervision and the ministry to this fact. After this, the ministry had to take the necessary legal actions.[46]

The respondent of a lawsuit of general interest could be all of the concerned parties. In a case when a cartel was operating as a legal entity, then the respondent mostly became the cartel itself via a representative. The members of a cartel could also be included in the lawsuit as concerned parties.

[40]MNL. K-184. 1932. 41. 51140/53726.
[41]MNL. K-184. 1932. 41. 51140/66312.
[42]Harasztosi (1936) at 533.
[43]Ranschburg (1931) 105.
[44]Ranschburg (1931) 105.
[45]Harasztosi (1936) at 532.
[46]Ranschburg (1931) at 105-106; MNL. K-184. 1937. 41. 86293/86293.

If a cartel did not have a separate legal entity on its own, the legal action was taken against its members. In cases where a cartel had a sales office or administrative organisation functioning as a legal entity, or all of its transactions were fulfilled by the cooperation of a bank, then it was practical to include these in the lawsuit, as well, for most of the debatable legal actions were made under the names of these legal entities. This is why it became justified that the enforcement to discard the ban or actions could be carried into effect directly against these, as well.[47]

There is a specific example for these in the contract in the case of the "bakery cartel", where Paragraph No. 30 elaborates on the legal entity's jurisdiction and tasks. A bank was delegated to fulfil these tasks, and it did so by using its own name but by keeping the interests of the members of the contract in mind, so it "is legally bound in their name, and in case of becoming a plaintiff or a respondent, could act on its own, and practice all rights that is present for all concerned parties as individuals".[48]

The large headcount of the cartels could significantly make summoning more difficult, and could slow down the legal action. So if a cartel had a registered legal representative, the statement of claim had to be delivered to that individual. If there was no such person, then the head of the Cartel Court appointed a representative. If the representative accepted the statement of claim, it meant that all of the cartel members received and noted it. It was the obligation of the representative to notify each member of the cartel of the contents, each of whom could participate in the lawsuit with separate legal advisors.

The proceedings of the Cartel Court were held with the basic principle that nobody with private interests can participate in them. As mentioned above, the concerned parties were represented by attorneys in the legal action. In cases of general interests, the action at law could only be filed against all participants, which, in these cases, meant all members of the cartel.[49]

Execution

In the verdict – in case of amerce – the court always forbade a cartel or one of its members from continuing their operation, or the enforcement of an agreement or regulation, by a pecuniary fine. This is how a cartel was forced to discontinue its operations. The verdict did not state the size of the fine, the executive branch was tasked to establish that. The execution was asked by the Legal Board. The application had to be filed to the Cartel Court, and certify that the cartel or its members fulfilled their obligations as stated in the verdict. The Cartel Court determined the fine after a hearing with the amerced participant. During this, they had to take the wealth intended to be gained from the action and the financial status of the participant into account. The warrant that enacted the fine was a legal document also carrying executive powers, which were obligated by a judicial

[47]Ranschburg (1931) at 106; Harasztosi (1936) at 534.
[48]MNL. K-184. 1934. 41. 26180/71732.
[49]Ranschburg (1931) at 106-107; Harasztosi (1936) at 534.

executive. Not obeying the interdiction could result in the repeated infliction of the fine.[50]

The Cartel Policy in the Cartel Case Law

A very specific area of Cartel Law was the Cartel Policy Law, which was closely connected to the state's power to oversee cartels, which meant nothing more or less than the protection of economy and public welfare. This procedure included the ordinary fining procedures.[51]

According to Act XX of 1931, only those who failed to introduce the Cartel Settlement or the order could be punished by ordinary fines, and did not provide ample reason for this omission for those who did not obey the appeal for the examination of the case by the Secretary of Economy, all in all, failure to fulfil the duty to provide data, or obstructed the fulfilment of the appeal.[52] Those who carry out appeals or settlements they were forbidden to do so by the Cartel Court, or manifest behaviour or carry out acts forbidden by the Cartel Court, are contained within the same framework.

In the first two cases, the assigned courthouses were required to see the case through, which started the procedure according to the request of the legal director of the treasury based on the proposal of the secretary. In the third case, the Cartel Court was privy to the case, for it could establish a fining ex officio. The Cartel Court was assigned to the case if the fine was established repeatedly but unsuccessfully for a second and third time according to the motion of the Secretary of Economy, or in another lawsuit of general interest according to the motion of the legal director, if they wished to suggest proscription from trade or industry permanently, or for a pre-established period of time.[53]

According to Harasztosi, none of his cases in fining procedures only the lawsuits concerning ordinary fines had any actual significance, especially if the presentation of a document was forgotten or was filed late; or in cases filed for omission of compulsory data presentation. In cases filed for the failure to oblige presentation duties, the matter of penalty fell under the rights of the assigned secretary. The confirmations filed to the secretary had no such effect, which vindicates the affair; the contestants could not achieve more with it than saving themselves from paying the ordinary fine.[54]

In fining procedures started at courts of justice, the court had to use the rules in cases of trade delinquencies. This order of 68,400/1914.I.M. had to be taken into account.[55]

In a case of ordinary fining procedures, no imprisonment could be ordered as a main rule, for the fine levied due to the failure to present a document could be

[50]Ranschburg (1931) at 108-109; Harasztosi (1936) at 536; Varga (2016) at 660-669.
[51]Harasztosi (1936) at 546-547; see Varga (2017) at 13, 46-56.
[52]Lőw (1935) at 350.
[53]Lőw (1935) at 351; Dobrovics (1934a) at 10; Anon. (1935).
[54]Harasztosi (1936) at 548; Lőw (1935a) at 352.
[55]1931:XX. tc. 15. §.

transformed into custodial sentences. There were specific cases where the fine could not be collected, but even then the Act had to specifically allow this transformation.[56]

The legal director asked for the actuation of the procedure, and presented the agreement Mihály Schwarz, Mihály Menzer, and Ignácz Ádler, timber merchants from Kiskunhalas, made in 1933 according to Paragraph No. 1 of the Cartel Procedural Law concerning timber, terracotta bricks, and pottery products. They introduced the cartel contract to the Secretary of Trade on 12th April, 1933; however, the list of pre-determined prices, which should have been one of the appendices of the contract, was only presented on the 4th May, 1933. In this case, the participants were late, and didn't even provide a justification for this. According to this, the Secretary of Trade ordered the legal directorate to actuate a case due to the failure to present a document. According to decree No. 68400/1914. I. M., the legal directorate asked the Royal Court of Kalocsa to actuate a case against the aforementioned companies.[57]

The fining procedure was heard by one of the orderly judges of the court of justice, who, as the presenter of the case, put the examination and trial aside to direct the attention of the complainants to the fact that the justifying statement had to be presented within 15 days after the appeal to do so was received. After this, the court decided on the appropriate penalty or the annulment of the case by taking into account the presented documents and the officially imparted information. The warrant established during the closed hearing was delivered to both the complainants and the royal legal directorate. According to this, the aforementioned decree presented role of public accuser to the royal prosecutor, but based on legal practices, this position was fulfilled by the legal director in such cases.[58]

In the aforementioned lawsuit actuated by the Court of Kalocsa, the participants were asked to provide a document in proof.[59] According to this, the complainants provided the document in proof, with which they wished to verify that they did not fail their duty to present documents, as established in the Act.[60] According to their document of proof, their opinion is that there was no sin of omission, for they didn't establish the appendix of the contract when they signed the contract, and after it was signed, they introduced it to the Secretary for inspection within the deadline.[61]

Within 8 days after the delivery, they could turn to the assigned High Court against the decision. This affected the decision by having a postponing effect. Any individual who was thwarted in validating his or her individual rights in a lawsuit of the first or second degree, could file a document of proof. However, one could not file a document of proof because of an omission; the application for the

[56]See: Act X of 1928 article 16.
[57]Cg. 187/1933. sz. BKML. VII. 2. c. See: P. VI. 9489/16/1934 BFL, 13. P. 46341/3/1933. In: 2746/1934 BFL, Cg. 35030/9. sz. In: 1158/1934 BFL., Cg. 33989/6/1932 In: 920/1933 BFL., Cg. 34592/4. sz. In: 4913/1933 BFL.
[58]Harasztosi (1936) at 549.
[59]Cg. 187/3/1933. sz. BKML. VII. 2. c; see: 13. P. 46341/3/1933. In: 2746/1934 BFL
[60]Cg. 187/1933. sz. BKML. VII. 2. c.
[61]Cg. 187/1933. sz. BKML. VII. 2. c; see: Cg. 187/4/1933. sz. BKML. VII. 2. c., Cg. 35030/9. sz. In: 1158/1934 BFL; Dobrovics (1934a) at 14.

document of proof had to be filed for the court of justice within 30 days of the established day of the trial or the expiration date of the failed legal remedy.[62]

The formulaic rules of the application were under the effect of Paragraphs 464-466 of the Criminal Code of Procedure. It had to be filed at the courthouse where the complainant failed to keep to the deadline. This application had to contain the reason for the delay and the justification information and data; the evidences that the court needed also had to be enclosed. If the matter was of the omission of an act of legal remedy, then the appointed court of the first degree turned the application over to the assigned higher court. In cases where the court made place for the document of proof, they, at the same time, also acted for the substitution of the omitted documents. The Court of Appeal had the power to come to an absolute decision in the case.[63]

In the lawsuit filed against the companies Nagykovácsi Lime Factory Corporation and the Lime and Grout Sales Corporation, the complainants presented in their document of proof that the debated agreement was not made on 20th March, 1933, for on this date, they only signed the draft of the contract. The court did not accept the statement presented in the document, and fined the complainants for breaking Paragraph No. 14 of the Cartel Procedural Law.[64]

To find the bearings of a case, the court could order an examination if deemed necessary. In this case, the court selected an investigator from its own apparatus of judges and notaries. The duty of the investigator was to describe the bearings of the case, and based on this, the court of justice could order the termination or the continuation of said legal action. In order to do so, the investigator interrogated the complainant, and acquired all documents and evidences necessary to clarify the bearings of the case.[65]

The rules of Bp. were deemed valid during the interrogation of witnesses and experts.[66] The court or the investigator could absolve any business associate from clarifying any circumstance which was not deemed vital to the examination or the case, yet would result in business secrets that are not necessary for the trial to come to light. If the investigator deemed it necessary, he could ask for a court order for an audit. This procedure was only valid if it was deemed necessary to ascertain the omission or act under investigation. If the procedural step could only be fulfilled by the means of writ, it was necessary to turn to the assigned County Court. The court of justice could order the investigator to continue or terminate the investigation.[67]

To uphold common welfare, the legal directorate could oversee the inspection, and because of this, it could examine the investigation documents, and could file a proposal to the investigator to continue or terminate the investigation, or could file a proposal to the court of justice to debate the investigator's regulations. The latter two were within the complainant's rights, as well, who

[62]Harasztosi (1936) at 549.
[63]Harasztosi (1936) at 549.
[64]Cg. 35537/3 in 5812/1934. BFL; Lőw (1935) at 354; Dobrovics (1935b) at 12; Dobrovics (1934b) at 13.
[65]Harasztosi (1936) at 550.
[66]Cg. 35030/9. sz. In: 1158/1934 BFL; Dobrovics (1934b) at 15.
[67]Harasztosi (1936) at 550.

could select a defence attorney even during the investigation, whose rights were also determined by the Bp. The defence attorney could only be one of the practicing legal experts, one who was registered at one of the Bar Associations.[68]

The complainant had no right to intervene or propose during the examination or the rest of the procedure, could not form a statement or get legal remedy. However, he or she was free to introduce any circumstance to the investigator, the court of justice, or Court of Appeal, which could move the examination of the omission or illegal activity forward or assist the verification. If he was not selected to appear as witness, he could press for this, and the court of justice and the Court of Appeal were obliged to enact this, with the added burden of nullifying.

After the examination was finished, the investigator sent the documents to the court of justice. Based on these documents, the court could order the termination or the continuation of the legal action. The court stated the termination of a legal procedure in a warrant. In any other case, a term had to be set in order to continue the case orally. In cases when the act or malpractice fell under the effect of criminal law, the legal action had to be transferred to a Criminal Court.[69]

A case was filed against the Chinoin Pharmaceutical and Chemical Factory Corporation for breaking Paragraphs No. 2 and 14 of the Cartel Procedural Law, and thus committing cartel malpractice; it took place at the court of justice of Budapest, where the court of the second degree reached a warrant, specified as No. 35779/2, but was turned to a higher court by the legal directorate, yet it was rejected by the Court of Appeal, and in their warrant, they pointed out Paragraph No. 1 of the 5th Act of 1878, according to which an act can only be considered a crime or a delinquency if the Act considers it as such.[70] In such cases, Criminal Courts should proceed.

The court could order the legal action to move forward, if the bearings of the case were clear. Before this, the complainant was asked to make a statement with a 15-day deadline.[71]

In the warrant ordaining the trial, the act or malpractice encumbering the complainant had to be stated, with the exact place of a specific provision under the law.

At the same time, the court of law was assigned with the task to provide a warrant to appear to all contestants, witnesses, and experts. They could even issue a warrant to appear for those participants who were announced after the beginning of the trial by any of the contestants. The complainant had to be warned that if he or she chooses not to appear, this non-attendance does not obstruct the continuation and discussion of the case; he was free to hire a legal representative to take place in the case.[72] The arrival of the subpoena and the beginning of the trial had to be at least 15 days apart. During trials, if the complainant was a natural person, he or she could not be apprehended, committed into custody, or put in

[68]Harasztosi (1936) at 551.
[69]Harasztosi (1936) at 551.
[70]P. VI. 8146/4/1934. BFL.
[71]Harasztosi (1936) at 551.
[72]Cg. 187/2/1933. sz. BKML. VII. 2. c.

detention awaiting trial. This was a significant difference between this and a criminal legal action.[73]

The beginning of the trial was marked by reading out the warrant that ordained it, and after that, the judge summarized the case. The trial could be held even if the contestants failed to appear. The witnesses and experts could be ordered to step forward, and, in order for them to do so, the trial could be interrupted for a few hours.

After this, the president could interrogate the present complainant in connection to the act or malpractice, and the members of the judicial board, the president of the legal department, and the defence attorney could ask their questions.[74] After these, verification was recorded.

After verification was finished, the president of the legal department introduced his proposal to the court, followed by the defence attorney and, finally, the complainant. There was no place for any other discussion in this section of the legal action. In cases where the contestants failed to appear, the judge introduced and described the evidence.[75]

The publicity of the trial was under the rules written down in Bp. The court could order the exclusion of the public in order to preserve business secrets. The rules written down in Bp. were also valid in connection to the development of the trial and maintaining order.[76]

During the fining procedure filed against the Textile Factory of Győr Corporation, the Textile Industry of Soroksár Corporation, and Mózes Freudinger and Sons Corporation, the royal court of Budapest considered the minutes of 18th February, 1931 as evidence, and according to this, they determined that the complainants were present in the general assembly on the raw material agreement, and these individuals "report their inclusion to the raw material agreement, since up to that point, their inclusion was based on gentlemen's agreement".[77] The court considered this unwritten gentlemen's agreement to fall under Act No. 1 of the Cartel Procedural Law.

The court judged the circular letter on the same merit, when it stated that it is a regulation in itself that should have been presented to the Secretary of Trade, "for it obviously serves the purpose that the individuals who wrote it down and signed it could sell their merchandise at a higher price, and thus limit the economic competition in connection to the formation of prices".[78]

The court considered the fact that the agreement formed by Rezső Vágó Corporation and the Hungarian Timber Corporation was not presented to the court in time, for it only fell under the effect of Paragraph No. 1 of the Cartel Procedural Law after the P. IV. 5261/1932 verdict of the Cartel Court as an extenuating circumstance. The court stated that "The decrees of the Cartel Procedural Law are not only valid for cartel contracts, but also establish the duty to present any sort of

[73]Harasztosi (1936) at 551.
[74]Harasztosi (1936) at 552.
[75]Harasztosi (1936) at 552.
[76]Lőw (1935) at 354.
[77]Cg. 35504/6. sz. In: 4681/1934 BFL.
[78]Cg. 33989/6/1932 In: 920/1933 BFL.

agreement which, in connection to merchandise, establishes any sort of limitation or regulation duty to the economic competition, both in the matters of circulation or price formation, so, even a delivery contract can fall under the regulations of Act No. 20 of 1931".[79]

After the trial was finished, the court of justice could either terminate the proceedings or could determine that the complainant was guilty and describe the appropriate punishment in its warrant. In both cases, the order needed reasoning. The proposal of the legal director did not bind the court in any way. The fine had to be executed with a 15-day deadline.[80]

The legal director established a similar procedure against the Sándor Angyalfi Asphalt and Tar Industry Corporation, János Biehn, Grozit Asphalt and Tar Chemical Products Corporation, Tivadar Helvey, DSc, Manó Kallós Ferenc Kollár and Co., Hungarian Asphalt Corporation, Posnánszky and Strelitz, and Hungarian Cover Panel Factory purchaser and sales cooperative due to cartel elision.[81] The royal court of Budapest stated in its warrant that the complainants are guilty, for the agreement which elongated the contract that expired on the 28th February, 1934, was only presented after the deadline, so, belatedly.[82] The court stated that "According to Paragraph No. 2 of the 20th Act of 1931, any agreement which modifies or regulates the economic competition, modifies and elongates he original, or any necessarily written agreement that falls under Paragraph No. 1 of the Cartel Procedural Law should be presented within 15 days after the establishment of the agreement. According to this mandate, it is not enough to just report the agreement, but a written form of the agreement had to be filed for the Royal Secretary of Trade of Hungary for registration."[83]

In another case, the court of justice of Budapest terminated the procedure against the complainants, for it turned out that the agreement was presented before the deadline, since the court established that the formation of a cartel agreement is, by definition, the moment when every participant signed the contract.[84]

Summary

To sum it all up, according to the sources available in archives, most cartel cases were judicial proceedings. It can be stated that the special nature of the rules of these proceedings was unique in the Hungarian Code of Civil Procedures, for the civil courthouses made their decisions in a case of civil law by using the rules of the Code of Criminal Action. After the turn of the century, the economic changes started processes in both the field of legal life and legal sciences, and as a result of this, a demand arose to legally codify any rules in connection to cartels. The foundations of these were found in private law, especially in the regulations of

[79]Cg. 34592/4 In: 4913/1933 BFL; Lőw, 1935. 355
[80]Harasztosi (1936) at 552; see: 13. P. 46341/3/1933. In: 2746/1934 BFL; Lőw, 1935. 353.
[81]Cg. 35891/3. sz. BFL. 11543/1934.
[82]Cg. 35891/3. sz. BFL. 11543/1934.
[83]Cg. 35891/3. sz. BFL. 11543/1934; Dobrovics (1934c) at14.
[84]Cg. 35547/12/1934 BFL; Szabó (1931) at 35-46

the commercial law, which could be further elaborated upon and lead to development of the regulations on the annulment of contracts in connection to dishonourable business competition. Beyond the creation of the technical legal regulations, the establishment of certain judicatory institutions was inevitable in order to enforce these. This is how the Cartel Court and the Cartel Committee became one of the most decisive legal institutions in economic life up until the middle of the 20th century.

References

Anon. (1932). 'A Kurián ma megalakult a kartelbíróság' in *Budapesti Hírlap*, 6 Marc 1932. 17.

Anon. (1933). 'A Kartelbíróság újabb ítélete' in *A Kartel* 3(1):8.

Anon. (1935). 'A karteltörvény három évi gyakorlata. – A kartelszerződés érvényességi kellékei' in *Közgazdasági Értesítő* 30(4): 9.

Dobrovics, K. (1934a). 'A karteljogi rendbüntetés gyakorlata' in *Közgazdasági Értesítő*. 29(33):9-16.

Dobrovics, K. (1934b). 'Bírói gyakorlat kartelügyekben' in *Közgazdasági Értesítő.* 29(47):11-17.

Dobrovics, K. (1934c). 'Karteljogi kérdések' in *Közgazdasági Értesítő*. 29(35):14-17.

Dobrovics, K. (1937). *Kartelismeretek*. „Monopol" Könyvkiadó Vállalat, Budapest.

Gavallér, L. (1932). 'A közérdekű per' in *A Kartel* 2:1

Harasztosi, K.F. (1936). *A kartel*. Grill Károly Könyvkiadóvállalata, Budapest.

Homoki-Nagy, M. (2017). 'Kartellszerződések a gyakorlatban' in *Versenytükör*. 24:4-14.

Kelemen, S. (1931). 'A megalkotandó kartelbíróság szerepéről' in *Kereskedelmi Jog.* 28(2):32-34.

Kelemen, S. (1933a).'A Kartelbizottság újjászervezése' in *A Kartel* 3(2):1-3.

Kelemen, S. (1933b). 'Bojkott, mint tisztességtelen verseny' in *A Kartel*. 3(1):5-6.

Kenes, B. (1912). 'A karteltörvény és a Kartelbizottság teljesíteni fogják hivatásukat' in *Kartel Szemle* 1(1):1.

Lőw, T. (1935). 'A gazdasági versenyt szabályozó megállapodások bemutatásáról' in *Magyar Jogi Szemle.* 16

Perényi, Zs. (1912). 'Összhangot kell teremteni a Kartelbizottság és az Árelemző Bizottság munkája között' in *Kartel Szemle* 1(1):1-2.

Ranschburg, N. (1931). *Karteljog kartelszervezet. A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX-ik törvénycikk magyarázatával és végrehajtási rendeletekkel*. Budapest: Iparjogvédelmi Egyesület.

Ranschburg, N. (1935). *A karteltörvény joggyakorlata és annak alapján az 1932. év óta kibocsátott rendeletek az Árelemző Bizottságról, a kartelilletékről és a márkacikkek ármegállapodásairól*. Budapest: Szerző kiadása.

Stipta, I. (2016). 'A gazdasági versenyt szabályozó megállapodásokról szoló 1931. évi XX. tc. hazai előzményei' in *Versenytükör* 12:53-63.

Szabó, I. (2016). A kartellfelügyelet szervezete és hatásköre az 1931. XX. törvénycikk nyomán. *Versenytükör.* 12:64-83.

Szabó, I. (2017). 'Az 1931. évi XX. törvénycikk rendes bíróságok előtti gyakorlata' in *Versenytükör*. 13:35-64.

Szegő, I. (1936). *A tisztességtelen verseny. (Az 1923. évi és az 1933. évi XVII. t-c. magyarázata).* Budapest.

Szente, L. (1931). 'A karteljavaslat' in *Kereskedelmi Jog*. 28(1):11-12.

Varga, N. (2016). 'The procedure of the Cartel Court' In Klára Gellén, Márta Görög (eds). *Lege et Fide: Ünnepi tanulmányok Szabó Imre 65. születésnapjára.* Szeged: Iurisperitus Bt.

Varga, N. (2017). 'Bírságolási eljárási szabályok kartellügyekben az 1931. évi XX. tc. hatálybalépését követően' in *Versenytükör* 13:46-56.